

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DANIEL GEORGE GRIFFIN,

Plaintiff,

v.

**No. 05-CV-1072
(TJM/DRH)**

JOHN J. DONELLI, Superintendent, Bare Hill Correctional Facility; PIPEN, Sergeant; L. JUBBERT, Deputy Superintendent of Security; M. WARNER, Registered Nurse, Barehill Correctional Facility; DANIEL BENWARE, Director of Transitional Services; T. BRIQUER, Correctional Officer; and SGT. GARDNER,

Defendants.

**THOMAS J. McAVOY,
Senior United States District Judge**

DECISION & ORDER

I. INTRODUCTION

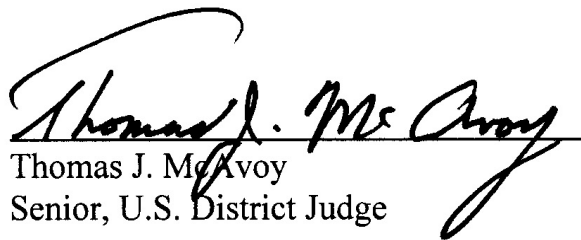
This *pro se* action brought pursuant to 42 U.S.C. § 1983 was referred to the Hon. David R. Homer, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). No objections to the Report-Recommendation and Order dated January 22, 2008 have been filed. Furthermore, after examining the record, this Court has determined that the Report-Recommendation and Order is not subject to attack for plain error or manifest injustice. Accordingly, the Court adopts the Report-Recommendation and Order for the reasons stated therein.

It is therefore,

ORDERED that the portion of Defendants' motion (Docket No. 41) seeking to dismiss the instant action is **DENIED** without prejudice.¹

IT IS SO ORDERED

DATED: February 12, 2008


Thomas J. McAvoy
Senior, U.S. District Judge

¹The Clerk of the Court shall notice that Magistrate Judge Homer granted that portion of Defendants' motion (Docket No. 41) that sought costs and attorney's fees occasioned by Plaintiff's failure to appear for his deposition on July 19, 2007. See Report, Rec. & Order (Docket No. 56). Plaintiff has not appealed that portion of Magistrate Judge Homer's Report, Recommendation and Order that granted costs and attorney's fees. Thus, Defendants' motion (Docket No. 41) is acted upon both by this Decision and Order and by Magistrate Judge Homer's Report, Recommendation and Order (Docket No. 56).